

BECKETT, Aidan (TND)

From: EPPS, Tracey (LGL/TLU)
Sent: Thursday, 13 March 2014 2:13 p.m.
To: BURGESS, Brad (TND); BRUGES, Murray (ECO)
Cc: GRIFFIN, Richard (LGL/TLU); WILKINSON, Kelsie (LGL)
Subject: TPP Implementation - NIA and RIS requirements

Hi Brad and Murray,

We have now had a closer look at the Cabinet Manual, Standing Orders, and Cabinet Guide (Guide to Cabinet and Cabinet Manual), and have also spoken to Penny Ridings who has much more experience with this process than Richard or myself.

We have concluded that there is no hard and fast rule that would prevent us from separating the NIA and RIS.

Key points arising from our analysis and discussion are as follows:

- The *Cabinet Manual* and *Standing Orders* only require an NIA in the context of examination of international treaties; they do not contain a requirement for a RIS.
- The *Cabinet Guide* says that for treaties an "extended NIA" must be prepared. An extended NIA would normally include all the requirements otherwise considered in a RIS and thus does away with the need for a RIS.
- There is thus a discrepancy between the *Cabinet Manual/Standing Orders* (which do not refer to RIS) and the *Cabinet Guide* (which requires an "extended NIA"). This can likely be explained by the fact that the *Cabinet Guide* is more regularly updated.
- Penny advises that preparing an extended NIA is easier than doing a separate RIS, in large part because the policy options are more straight forward, you are asking for a decision to either sign the agreement or not. In the TPP context, she suggested that the extended NIA would not in fact contain all the RIS elements (because we will not yet know how exactly the Agreement is intended to be implemented). The policy choice being presented to Cabinet would be whether or not to sign the Agreement, and we would be advising Cabinet that the policy choices involved in implementation of the Agreement would be handled separately. The RIS would be presented at that time.
- s9(2)(g)(i)

she did suggest that if we are in any doubt as to the appropriateness of taking this course, that we should check with the RIS people at Treasury. But again, as I noted at the top of the email, there is no hard and fast rule that says we cannot do it this way.

As an aside, s9(2)(g)(i) when we do come to doing a RIS, it is important to ensure it meets the guidelines published by Treasury s9(2)(g)(i)

Cheers,

Tracey

Tracey Epps

Senior Trade Law Adviser

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BECKETT, Aidan (TND)

From: KALDERIMIS, Sophie (LGL/ERL)
Sent: Monday, 22 June 2015 1:56 p.m.
To: BOULTON, Charles (NAD)
Subject: RE: NIA guidelines
Attachments: International Treaty Making Guide 2014.docx

Hi Charles

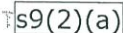

We do not have a template per se, however if you open the treaty making guide, from page 24 the requirements of an extended NIA are set out.

Thanks,

Sophie

Sophie Kalderimis

Treaty Officer
Legal Division
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere



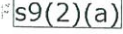

 

From: BOULTON, Charles (TND)
Sent: Monday, 22 June 2015 10:03 a.m.
To: KALDERIMIS, Sophie (LGL)
Subject: NIA guidelines

Hi Sophie - are you able to flick me the template for an extended NIA? I'm picking through the TPP NIA, and am looking for a point of reference (e.g. minimum requirements / scope to re-structure).

Charles Boulton

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Guidance for contributions to the National Interest Analysis for the Trans-Pacific Partnership

Section 3: Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

The advantages and disadvantages section will be a key section of the National Interest Analysis (NIA). For TPP, it will take on added significance given:

- the broad range of benefits that should accrue from TPP (both market access and outcomes on NTBs as well of the establishment of institutional mechanisms that will break down barriers over time);
- outcomes on issues that have been included in New Zealand trade agreements in the past, but which outcomes in TPP are significantly more complex and/or contentious (e.g. intellectual property, financial services, electronic commerce, labour and environment); and
- 'new' issues that will require substantive commentary/analysis (e.g. potential outcomes on SOEs, rules pertaining to Pharmac).

This means that TPP will have a wider range of potential implications for New Zealand than previous agreements and that analysing the advantages and disadvantages will be both more complex, but just as important, than it has been for previous agreements.

We ask that chapter leads err on the side of including *more* (rather than less) information and analysis for their contributions to the Advantages and Disadvantages section. This is because we expect elements of this work will also be drawn on for other sections (e.g., the 'Economic, Social, Cultural and Environmental Costs' section) but at this stage in the development of the NIA, it will be very useful to have this information collated and clearly presented in this section.

The table below provides MFAT's initial thinking on the level of information and analysis that will be needed to support each chapter.

Suggested level of information/analysis required for each chapter

Significant <i>Significant analysis will be required</i>		
Goods/Agriculture/Market Access		
Investment (commentary unlikely to exceed 2 pages)		

Light <i>A paragraph or two should be sufficient</i>	Medium <i>1 page should be sufficient, but some issues may require 1-2 pages</i>	Significant <i>Significant analysis will be required</i>
Trade remedies	Customs	Market Access for Financial Services, Investment, Temporary entry
Temporary entry	TBT	Government procurement (commentary unlikely to exceed 2 pages)
Horizontal issues (except Regulatory coherence)	CBTS	Competition policy (inc SOEs)
Administrative and institutional	Financial services	Intellectual property
Transparency and anticorruption	Telecommunications	Environment (commentary unlikely to exceed 2 pages)
Final provisions	E-Commerce	Pharmac (commentary unlikely to exceed 2 pages)
	Labour	
	Regulatory coherence	
	Transparency and anti-corruption	
	Dispute settlement	
	Exceptions	

Proposed structure of advantages and disadvantages section

For this National Interest Analysis, we ask that the Advantages and Disadvantages section is structured on a chapter-by-chapter basis. I.e., for each chapter, both advantages and disadvantages should be listed in the same section, rather than having a list of all advantages across the whole agreement followed by a list of all disadvantages (as in some previous NIAs).

Context/overview – Brief explanation of the chapter and how it aligns with New Zealand policy and practice, and outcomes in previous agreements.

Advantages and disadvantages (two separate sub-headings) – list all tangible advantages and disadvantages accruing to **New Zealand** from the chapter, noting

- what the advantage/disadvantage is ("the what")

- which New Zealanders are affected by it ("the who" – e.g., consumers, certain companies, the Government, the economy as a whole etc)
- describe why this is considered an advantage/disadvantage ("the why")
- When describing disadvantages, any options or strategies for mitigating or overcoming these (e.g. particular policy approaches to implementation) should be noted. This will need to be balanced against disclosure of possible implementation approaches that are likely to be contentious for some TPP negotiating partners).

All known direct, indirect and conditional advantages and disadvantages¹ should be cited, explained and, where possible, quantified in this section. These may include economic, fiscal, social, environmental costs and benefits accruing to individuals, firms and the government². As has been the case in the development of negotiating mandates for TPP, for many issues we acknowledge that it will not be feasible to estimate or quantify costs and benefits. In such circumstances, robust qualitative assessments will be required. For the purposes of the NIA, "benefits" and "costs" should be considered synonymous with "advantages" and "disadvantages".

You should also look to include information about uncertainty associated with advantages and disadvantages in this section. If you consider issues within your Chapter present opportunities or risks (essentially advantages or disadvantages that **may or may not eventuate**), you should record these as either advantages or disadvantages, and provide an assessment of the likelihood and potential impact of the opportunity/risk.

¹ **Direct costs and benefits:** some decisions in the agreement are likely result in an increase/decrease in the price faced by consumers, or an increase/decrease in the input cost faced by producers, resulting in a direct transfer of income from New Zealand to other TPP countries, or vice versa. **In-direct / dynamic costs** and benefits are the costs and benefits that result from changes in the behaviour of individuals and firms in response to changes in price or cost (i.e. direct costs and benefits). In-direct costs will be harder to measure, as they will be dependent on assumptions about behaviours. However, looking at the direct costs in isolation is misleading, and the indirect costs have the potential to be large. **Conditional costs:** some decisions may only increase the probability that New Zealand will face costs or benefits in the future. These costs may never eventuate, but still need to be accounted for.

² Where possible/relevant, the marginal rather than the average cost or benefit should be used. Considering marginal costs and benefits (as opposed to average costs and benefits) provides a more accurate picture of the true costs and benefits of a particular treaty action to New Zealand.

Example:

Chapter X

Context

A paragraph or two explaining the context of Chapter X, including how it compares to current NZ regulatory settings and previous agreements to which NZ has become a party.

Advantages (noting "what", "who" and "why" and any uncertainties with respect to each advantage)

- Advantage 1
- Advantage 2
- Advantage 3

Disadvantages (noting "what", "who" and "why" and any uncertainties with respect to each disadvantage)

- Disadvantage 1
- Disadvantage 2
- Disadvantage 3

Guiding principles for drafting the National Interest Analysis:

- Analysis of the advantages and disadvantages to New Zealand should be **written using accessible, plain English**. The NIA will be a public reference document. Contributors to the NIA should therefore assume little expert knowledge on the part of readers. Complex concepts should be explained and to the extent possible, jargon and legal terms should be avoided.
- The **level of analysis should be in proportion to the significance of the chapter** for New Zealand. If the chapter involves significant departure from New Zealand's current legislative or policy approach to an issue or presents major advantages or disadvantages, it should receive extensive analysis, including quantitative analysis where possible. Conversely, if the chapter presents minor or no significant departure from established New Zealand policy or practice, or no major advantages or disadvantages, a brief summary of the chapter's effect on New Zealand should suffice. See the table above for suggested level of analyses for each chapter.
- The NIA only considers **advantages and disadvantages to New Zealand** of taking a particular treaty action. It should not comment on the potential advantages or disadvantages to other TPP Parties.
- Treasury's best practice guidance for writing National Interest Analyses states that where possible, advantages (and disadvantages) **should be considered relative to the counterfactual of New Zealand not signing the TPP**

agreement (rather than relative to the status quo)³. In other words, estimates of how an advantage under TPP may benefit New Zealand in 2030 should be compared to forecasts of how the situation would look if New Zealand does not join TPP. E.g., "exports of product x to TPP Countries are predicted to be \$y dollars in 2030. If New Zealand does not join TPP, it is predicted that exports of product x to TPP Countries in 2030 would be \$z." In most cases, it is unlikely that sufficient quantitative data exists to support such statements, but to the extent possible, advantages should be compared against the counterfactual, rather than the status quo.

- The following **Cost-Benefit Analysis table** (which was completed for a range of issues in 2012) may provide a useful method of framing your thinking as you consider the net advantages and disadvantages within a chapter. However, you do not need to provide this table to MFAT.

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³ It is more accurate to consider the costs and benefits of a proposed treaty action with reference to what may happen in the future if New Zealand does not take that action, rather than to compare it to the current situation.

Cost Benefit Analysis table

Provision	What? Nature of the costs and benefits	How much? Quantitative/qualitative analysis (include source references)	Who? Distributinal analysis
Provision: [briefly describe the provision] Implications: [briefly describe the likely implications of the provision]	Costs Direct: [describe the nature of the costs, and why they occur] Indirect: Conditional: Benefits Direct: Indirect: Conditional:	[describe the nature and type (including sources) of analysis that exists, and what that analysis suggests for the likely quantum of cost/benefit. Note additional analysis that may need to be undertaken]	[describe who the costs fall to, and how the implications are distributed across New Zealand society]
Provision: Implications:	Overall Assessment (balance of costs and benefits) [give an overall assessment of the balance of costs vs. benefits in terms of nature]	[give an overall assessment of the balance of costs vs. benefits in terms of quantum]	[give an overall assessment of the balance of costs vs. benefits in terms of who they accrue to]
	Costs Direct: Indirect: Conditional: Benefits Direct: Indirect: Conditional: Overall Assessment (balance of costs and benefits)		

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BECKETT, Aidan (TND)

From: KALDERIMIS, Sophie (LGL/ERL)
Sent: Wednesday, 1 July 2015 4:34 p.m.
To: BOULTON, Charles (NAD)
Cc: GALVIN, Liese (PAR)
Subject: RE: TPP - NIA Chapter guide

[]

Hi Charles

Looks like very helpful advice to me. A good summary of the process. I have highlighted what looks like to be one small error below and included one related note in red.

Thanks,

Sophie

Sophie Kalderimis

Treaty Officer
Legal Division
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

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From: BOULTON, Charles (TND)
Sent: Wednesday, 1 July 2015 2:41 p.m.
To: KALDERIMIS, Sophie (LGL)
Cc: GALVIN, Liese (TND)
Subject: TPP - NIA Chapter guide

[]

Hey Sophie – I'm about to start emailing the various TPP chapter leads to update their NIA inputs. There's a bit of variety in the approach each chapter lead has taken, so I want to provide a bit more guidance. I'll attached your Treaty Making Guide, but want to include the following. Does it look okay?

NIA Guidance

See attached Treaty Making Guide for drafting instructions on the NIA (pages 25-33). The boxes below summarise how we are structuring the TPP NIA. This is intended to give context for TPP Chapter leads.

Ch. 4: Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

It should address in detail the advantages of proceeding and the disadvantages of not taking the action. In weighing these pros and cons, canvass the potential economic, political, social, cultural and environmental effects arising from the proposed treaty action. Put it in the context of the domestic policy environment. Reference should be made to how any disadvantages will be managed or overcome, and whether they are a justifiable trade-off in light of the advantages.

- Given the comprehensiveness of the Agreement, TPP NIA Section 4 is structured with a separate heading for each TPP chapter, based on inputs from TPP Chapter leads.
- Advantages and disadvantages should be assessed with respect to NZ not entering TPP, rather than the non-TPP status quo / baseline.
- (For example, joining TPP will mean NZ widget exporters get duty free access to Mexico; not joining TPP will mean they have to keep paying the tariff and face increased competition from Australian widget makers that will be able to export duty-free.)
- An obligation or feature of TPP that does not entail a substantive advantage/disadvantage should be addressed in one of the following sections, not this section.

Ch. 5: Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

This section should identify all the substantive legal obligations that will be imposed on New Zealand as a result of the proposed treaty action. An obligation is, in essence, something that New Zealand will be required by the treaty to do, or refrain from doing.

- This TPP NIA Section has been drafted by MFAT's Trade Law Unit. Chapter leads are asked to review the text for their section.

Ch. 6: Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

New Zealand's approach to all international treaties is that ratification/ accession is only considered where there is strict compliance of law, policy and practice with all the provisions of the treaty.

Accordingly, this section should describe succinctly what will be done to implement the obligations that will be imposed on New Zealand by the treaty action (i.e. the obligations identified in the previous section). Implementation options available to the government should be discussed. If relevant, provide detail on the government's preferred implementation option.

- MFAT TND will draft this TPP NIA Section, based on the summary information from Chapter leads where likely legislative is required. NOTE: implementation may also be done by policy, rules and soft implementation measures.

Ch. 7: Economic, social, cultural and environmental costs and effects of the treaty action

This section should provide a balanced assessment of the effects and costs associated with the treaty action.

- MFAT TND will draft this TPP NIA Section, based on existing modelling, and Section 4 inputs from Chapter leads. The structure of the Section reflects the NIA template, not the TPP structure.
- Relevant sections will be run past TPP Chapter leads.

Ch 8: The costs to New Zealand of compliance with the treaty

Specify the financial costs, risks and benefits to New Zealand of compliance with the treaty action (even if difficult to estimate). This may include, but is not limited to, contributions to international organisations provided for in the treaty action, costs of establishing/administering any new domestic agency as a direct result of taking the treaty action, or any other financial implication for the Government, business or industry.

- MFAT TND will draft this TPP NIA Section. The structure of the Section reflects the NIA template, not the TPP structure. It focuses on financial and fiscal costs, rather than the "disadvantages" and "measures" outlines in NIA Sections 4 and 6.
- Relevant sections will be run past TPP Chapter leads.

Charles Boulton

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NEW ZEALAND
UNITED NATIONS
SECURITY COUNCIL
2015-16

National Interest Analysis Drafting Instructions

These drafting instructions set out the 11 **mandatory** NIA section headings which are required by Standing Order 398. Under each heading is a general description of what is required in each section. Bullet points then list the specific requirements that must be incorporated under each heading.

This document should be read in conjunction with the relevant sections of the *Cabinet Manual* and the Cabinet Office's *CabGuide* (the Cab Guide can be accessed at: <http://www.cabguide.cabinetoffice.govt.nz/procedures/international-treaty-making>)

These headings must be used in the NIA:

- 1 Executive summary
- 2 Nature and timing of the proposed treaty action
- 3 Reasons for New Zealand becoming Party to the treaty
- 4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand
- 5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms
- 6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation
- 7 Economic, social, cultural and environmental costs and effects of the treaty action
- 8 The costs to New Zealand of compliance with the treaty
- 9 Completed or proposed consultation with the community and parties interested in the treaty action
- 10 Subsequent protocols and/or amendments to the treaty and their likely effects
- 11 Withdrawal or denunciation provision in the treaty
- 12 Agency Disclosure Statement (only required if the proposal has legislative or regulatory implications)

1. Executive summary

This section should provide a brief (maximum one page), high-level contextual statement about the proposed treaty action, including the purpose of the proposed action and a summary of why it is in the national interest.⁷

2. Nature and timing of the proposed treaty action

This section should provide a general introduction to the treaty and the treaty action. This section must include:

- *The full title of the treaty* (it may be a Convention, Protocol, Agreement, Exchange of Letters, etc). Include date concluded and the common or abbreviated name where relevant. Give dates of signature/exchange of notes if this has already occurred. For a multilateral treaty action, state whether it is in force generally and when it is likely to enter into force for New Zealand and/or generally. Also include a common term that will be used to refer to the treaty throughout the NIA (e.g. the "Agreement"). It is important to make sure the treaty is consistently differentiated from other treaties that may be discussed in the NIA. Do not annex the treaty text. The treaty text will be presented to the House along with the NIA.
- *The nature of binding treaty action*. Refer to relevant articles of the treaty to explain what treaty action is proposed (e.g. ratification, accession, acceptance, definitive signature, consent to be bound, entry into force through an exchange of notes or letters, withdrawal, termination, denunciation etc). Explain if the treaty action terminates an existing treaty upon entry into force. If the treaty action is a revision of, or a Protocol or amendment to, an existing treaty or will replace an existing treaty, this should be explained. The NIA should clearly establish the treaty action's relationship to the existing treaty. Include any territorial limits or any interim application of treaty provisions. In the case of multilateral treaties, include any reservations or declarations.
- *The date by which the Government proposes to complete binding treaty action* (e.g. before .../ after .../ as soon as practicable after...), and when it will enter into force for New Zealand.
- *Application to Tokelau, the Cook Islands and Niue*, note whether consultation with Tokelau, the Cook Islands or Niue is required. If it is, note

⁷ Note that the purposes of the Executive Summary in a NIA and a treaty action Cabinet paper are different. The Executive Summary in a Cabinet paper can be much shorter than in a NIA.

whether this has been conducted and whether, as a result, the treaty action will apply to Tokelau, the Cook Islands or Niue.

3. Reasons for New Zealand becoming Party to the treaty

This section should provide a broad overview of the reasons for New Zealand to take the proposed treaty action. It should justify the decision to take the treaty action and may refer to material in other sections of the NIA. This section must include the following:

- *The key background to the treaty.*
- *A brief, high-level summary of key features of the current situation, including, if applicable, a summary of the nature and magnitude of the problem that the treaty action seeks to address (the root cause of the problem should be identified, not just the symptoms), how the proposed treaty action will address the problem and why the proposed treaty action is the preferred option (as opposed to New Zealand not taking the treaty action, or taking an alternative action).*
- *Key reasons why New Zealand should take the proposed treaty action.*
- *The policy objective(s) the government wishes to achieve by taking the treaty action.*
- *Major and like-minded parties to the treaty (i.e. states that have already signed and/or ratified the treaty).*

4. Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

This is the key section of the NIA. It should address in detail the advantages of proceeding and the disadvantages of not taking the action. In weighing these pros and cons, canvass the potential economic, political, social, cultural and environmental effects arising from the proposed treaty action. Put it in the context of the domestic policy environment. Reference should be made to how any disadvantages will be managed or overcome, and whether they are a justifiable trade-off in light of the advantages.

If it is a bilateral treaty action, New Zealand's relationship with the proposed treaty partner should be considered. In the case of a multilateral treaty, New Zealand's interests in the international organisation under whose auspices the treaty has been negotiated should be canvassed.

This section must include an outline of the specific advantages and disadvantages to New Zealand in completing and implementing the treaty action (not to Parties to the treaty in general). This section should establish that, in light of the options available to New Zealand, the proposed treaty action is the best policy option and will achieve the Government's policy objective(s) set out in the previous section.

5. Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

This section should identify all the substantive legal obligations that will be imposed on New Zealand as a result of the proposed treaty action. An obligation is, in essence, something that New Zealand will be required by the treaty to do, or refrain from doing.

This section should refer readers to the specific article, provision or chapter of the treaty, should they wish to read the obligation in its context. In the case of amendments, protocols etc, this may require reference to provisions of the head agreement. Include the obligations owed to New Zealand by other countries under the treaty, and look beyond the text to the negotiation process, and any legal advice received, to understand which of the provisions contain a noteworthy obligation. If legal advice has been sought and relied upon for this section, please attach that advice when you submit the draft NIA to MFAT for comment.

This section must:

- *Include a description of substantive obligations in the treaty.* This must be in plain English to allow readers to understand the nature and scope of the obligations. The text of a provision containing an obligation should not simply be repeated. It is, however, not necessary to describe all obligations article by article. It may be more appropriate to group noteworthy obligations by type (e.g. financial, government, private sector).
- *Identify the substantive variations to template text* (if applicable). If the treaty action is based on a model-type text or 'template' treaty (e.g. double tax, social security or air services), identify any substantive variations to the template or text.
- *Include a reservation statement*, specifying whether the treaty allows Parties to make a reservation upon ratification. If so, specify whether New Zealand will use this mechanism in respect of any of the obligations.

- *Include a dispute resolution statement*, specifying whether the treaty contains a dispute resolution mechanism. If so, include an explanation of the resolution process.
- *Include a statement as to any continuing obligations from the head treaty* (if applicable). If the treaty action is a withdrawal from, or a denunciation or termination of, an existing treaty, describe the obligations of the head treaty and identify any of those obligations that will remain in effect after the treaty action enters into force.

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

New Zealand's approach to all international treaties is that ratification/ accession is only considered where there is strict compliance of law, policy and practice with all the provisions of the treaty.

Accordingly, this section should describe succinctly what will be done to implement the obligations that will be imposed on New Zealand by the treaty action (i.e. the obligations identified in the previous section). Implementation options available to the government should be discussed. If relevant, provide detail on the government's preferred implementation option.

A If no new measures are required to implement the obligations resulting from the treaty action, this section must:

- Identify how the obligations in the treaty are met by existing legislation.

B If measures are required, this section must:

- Provide a summary of the range of options available for implementing the treaty action.
- Include a description of why each option is preferred/not preferred, including the benefits and costs (including risks) of alternative options.

C If the measures required have legislative implications, this section must:

- Identify which obligations require legislative implementation.
- Explain how the proposal will be given effect to, including legislative timetables (i.e. has it been awarded a place in the legislative programme).

- *Include plans for notifying affected parties of what they need to do to comply with any new requirements (e.g. gazetting of legislation or any specific legislative process), if applicable.*
- *Explain how any implementing legislation would impact on existing regulation, including whether the proposal overlaps and interacts with existing rules, whether the proposal makes any existing rules redundant, and whether these rules are being removed or altered as part of the proposal (e.g. is the implementing legislation stand-alone or does it impact on existing legislation by requiring consequential amendments).*
- *Identify the enforcement strategy that must be implemented to ensure that the preferred option achieves the public policy objective and plans for monitoring and evaluating the preferred option, including key dates (e.g. review clauses, meetings of the Parties and/or reporting obligations set out in the treaty), if applicable.*

D *If the measures required include the making of regulations, this section must:*

- *Identify the primary legislation allowing for regulations and indicate the timeframe in which regulations are expected to be approved and gazetted.*

E *If the measures required include implementation by way of an overriding regulation, this section must:*

- *Refer to this explicitly and provide justification for it (this is a mandatory Cabinet requirement).*

7. Economic, social, cultural and environmental costs and effects of the treaty action

This section should provide a balanced assessment of the effects and costs associated with the treaty action. It is *not* intended to provide an opportunity to advocate for the proposed treaty action. If the treaty is expected to have a large impact on society, officials should ensure that someone with the appropriate expertise carries out a cost-benefit analysis.

This section must:

- *Specify the economic, social, cultural and environmental costs and effects of the proposed treaty action.*

- *Identify the incidence and scope of the effects* (i.e. are they short term, transitional or long term?). Note any likely long term environmental effects associated with the treaty action.
 - *State whether the treaty is expected to have a large impact on the economy* (e.g. will it impact on the labour market, international trade, technology, inflation and/or economic growth?)
 - *Identify any particular groups or sectors likely to be affected directly or indirectly by the treaty action, and the impact of the treaty action.* Note whether the treaty will have a disproportionate effect on a particular ethnic or cultural group in New Zealand society. Identify the social consequences if the treaty has an effect on a particular industry or geographic location.
 - Specify whether the treaty action complies with relevant resource management requirements and environmental policy trends.
8. The costs to New Zealand of compliance with the treaty
- *Specify the financial costs, risks and benefits to New Zealand of compliance with the treaty action* (even if difficult to estimate). This may include, but is not limited to, contributions to international organisations provided for in the treaty action, costs of establishing/administering any new domestic agency as a direct result of taking the treaty action, or any other financial implication for the Government, business or industry. In the case of a protocol or amendment to an existing treaty for example, such costs should also be set in the context of those of the head agreement. When estimating costs identify any major assumptions, potential deficiencies or estimates in the information relied upon. Where quantitative information is not available, qualitative information will be acceptable. Describe how any risks identified will be/are being mitigated.
 - *Identify the incidence and scope of the costs, risks and benefits* (i.e. are the costs, risks and benefits short term, transitional or long term?). Note any likely long term environmental costs or benefits associated with the treaty action.
 - *Note whether any compliance costs will be imposed or reduced for businesses in New Zealand as a result of compliance with the treaty action.* If there are, address sources of compliance costs; the firms affected, by sector and size; estimates of the compliance costs identified (where quantitative data is not available qualitative information will be

acceptable), indicating on whom they impact and the impact on different sized firms; and steps taken (if any) to minimise compliance costs.

- *Identify any hidden administrative costs on government agencies in the implementation of the treaty* (e.g. additional health and safety requirements, data recording or information sharing requirements).

9. Completed or proposed consultation with the community and parties interested in the treaty action

This section should set out in full the consultation process and the results. In relation to consultation, note that:

- *It is for the government department leading the proposed treaty action to determine what consultation is required.* The manner and degree of consultation will depend on the issues under consideration. Consultation should be commensurate with the impact of the treaty on current policy and existing law. The Minister and department concerned should ensure that adequate consultation has taken place.
- *Departments should identify Māori concerns at an early stage and tailor consultation accordingly.*
- *The Treasury must be consulted on all treaty actions that have financial implications.*

This section must identify:

- *Who has been consulted* (e.g. government departments, iwi, industry, NGOs, academics).
- *At what stage they were consulted.*
- *The nature of consultation.*
- *Key feedback from those consulted*, with particular emphasis on any significant concerns that were raised about the proposed treaty action, how the lead department addressed the concerns, and if they did not alter the proposal, why not. However, do not attribute governmental feedback to specific government departments/ ministries.
- *If there was no consultation, the reasons why.*

10. Subsequent protocols and/or amendments to the treaty and their likely effects

This section must:

- *Describe the amendment procedures set out in the treaty.* If the proposed treaty action (such as an amendment or annex) is made under an existing treaty, refer also to the amendment provisions in the existing treaty.
- *Identify whether amendments enter into force automatically for the Parties,* or whether they require separate approval. Include details of the likely type and frequency of any automatic amendments, and the process and timeframes set out in the treaty.
- *Identify whether the treaty action provides for the negotiation of future related legally binding instruments,* such as protocols, annexes, rules or standards. If possible, indicate what areas these future instruments are likely to address and the possible effects of this. Describe how such future instruments are to be made binding on the parties (e.g. would approval be automatic/by provision of the treaty/by executive action/require legislative approval?). Explain if such future instruments could expand or contract our obligations under the treaty, whether they would have domestic implications and whether future instruments would be subject to the New Zealand treaty process.

11. Withdrawal or denunciation provision in the treaty

This section should indicate whether the treaty action provides for withdrawal or denunciation and, if so, what procedures apply and under what conditions. Where known, include the reason behind the notice period specified in the treaty (i.e. why is the notice period one year, five years, etc). If any provisions/obligations continue after withdrawal or denunciation, mention them here.

This section must:

- *Identify how New Zealand may withdraw from or denounce its obligations under the treaty.*
- *Identify any provisions/obligations that continue after withdrawal or denunciation* and the period for which they will apply to New Zealand.
- *If there is no express withdrawal or denunciation provision,* indicate that withdrawal is possible only with the consent of all/both the parties (Article 54, Vienna Convention on the Law of Treaties).

- *If the proposed treaty action (such as an amendment or annex) is made under an existing treaty, set out any withdrawal or denunciation provisions in the treaty.*

12. Agency Disclosure Statement

This section should only be included if the proposed treaty action involves any legislative or regulatory proposals.

This section should describe the nature and extent of the analysis undertaken, including any significant constraints, caveats or uncertainties and whether or not any of the policy options are likely to have effects that the government has said will require a particularly strong case before regulation is considered. The template Agency Disclosure Statement is as follows:

“AGENCY DISCLOSURE STATEMENT

[A paragraph describing the nature and extent of the analysis undertaken, explicitly noting:

- *Key gaps, key assumptions, key dependencies, and any significant constraints, caveats or uncertainties concerning the analysis; and*
- *Any further work required before any policy decisions could be implemented.]*

[A paragraph identifying whether or not any of the policy options are likely to have effects that the government has said will require a particularly strong case before regulation is considered - namely it could:

- *impose additional costs on businesses during the current economic recession;*
- *impair private property rights, market competition, or the incentives on businesses to innovate and invest; or*
- *override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines)*

[Name and designation of person signing on behalf of the agency]

[Signature of person]

[Date]”

In addition, the related Cabinet paper seeking approval for the extended NIA needs to include a **Quality of the Impact Analysis** (for more information please refer to the section on the Format of International Treaty Action Papers in the Cabinet Office’s *CabGuide* and the *Regulatory Impact Analysis Guidelines* available from the Treasury website or the Regulatory Impact Analysis Team on ria@treasury.govt.nz).

TPP: NATIONAL INTEREST ANALYSIS

REPORT STRUCTURE AND ALLOCATION OF RESPONSIBILITY

MARCH-APRIL 2014

SECTION	QUANTITATIVE ANALYSIS AVAILABLE (based largely information signalled in TPP Cabinet papers in recent years)
EXECUTIVE SUMMARY	
1. NATURE AND TIMING OF PROPOSED AGREEMENT ACTIONS	
2. REASONS FOR NEW ZEALAND BECOMING A PARTY TO THE AGREEMENTS 2.1 Background to the Agreement	
3. ADVANTAGES AND DISADVANTAGES TO NEW ZEALAND ENTERING THE AGREEMENT 3.1 Trade in Goods <ul style="list-style-type: none"> - Market access - General provisions - Agriculture - Textiles - Rules of Origin - Customs - Sanitary and Phytosanitary (SPS) - Technical Barriers to Trade (TBT) - Trade Remedies 3.2 Investment and Services <ul style="list-style-type: none"> - Investment - Cross Border Trade in Services - Financial Services - Telecommunications - Temporary Entry 	<p>3. Overall costs and benefits: Macro studies (not specifically focused on NZ but estimate headline numbers for NZ): Petri et al 2011/12 (East West Centre/Peterson Institute) and Kawasaki 2014 (GRIPS University Japan), which provides headline indicators of TPP value to NZ including estimates of value of tariff removals and NTMs.</p> <p>3.1 Market access: estimated average annual duties paid by NZ exporters to TPP markets (exc. CA, MX and JP) during 2007-2009.</p> <p>Estimated average annual duties collected by NZ on imports from TPP countries 2009-2011</p> <p>Modelled a range of scenarios of the value to NZ of improved access to TPP markets for key NZ export sectors (MPI modelling using the OECD's Aglink model – a dynamic partial equilibrium model).</p> <p>Ice wine: exports estimated at \$50 000 by NZ Winegrowers.</p> <p>3.4 IP: Pharmac provides estimates on various costs associated with patent term extension (inc biologics) (EGI (13)251)</p> <p>Costs (operational, extra FTEs, lost savings</p>

SECTION	QUANTITATIVE ANALYSIS AVAILABLE (based largely information signalled in TPP Cabinet papers in recent years)
<p>3.3 Government Procurement</p> <p>3.4 Other regulatory issues</p> <ul style="list-style-type: none"> - Electronic-commerce - Intellectual Property - Competition - Regulatory Coherence <p>a. Other issues</p> <ul style="list-style-type: none"> - Legal and institutional provisions - Transparency provisions, including rules relating to Pharmac - Cooperation and Capacity Building - Development - Small and Medium Enterprises - Competitiveness & Business Facilitation - State-Owned Enterprises and Competition - Trade and Environment - Trade and Labour 	<p>etc) associated with AUSFTA-type "reimbursement" rules on Pharmac (IP Table, EGI Sub Aug 2012)</p> <p>Modelling of costs to consumers of copyright term extension (IP Table, EGI Sub Aug 2012)</p> <p>ISPs – costs of counter notices. (IP Annex of EGI Sub Aug 2012).</p> <p>3.4a Transparency provisions: Costs of AUSFTA-type rules on Transparency (inc. on medical/hospital devices) (CAB Min (12) 30/12.</p>
<p>4. LEGAL OBLIGATIONS WHICH WOULD BE IMPOSED ON NEW ZEALAND BY TPP AND AN OUTLINE OF THE DISPUTE SETTLEMENT MECHANISM</p> <p>4.1 Trade in Goods</p> <ul style="list-style-type: none"> - Market access - General provisions - Agriculture - Textiles - Rules of Origin - Customs - Sanitary and Phytosanitary (SPS) 	

SECTION	QUANTITATIVE ANALYSIS AVAILABLE (based largely information signalled in TPP Cabinet papers in recent years)
<ul style="list-style-type: none"> - Technical Barriers to Trade (TBT) - Trade Remedies 4.2 Investment and Services <ul style="list-style-type: none"> - Investment - Cross Border Trade in Services - Financial Services - Telecommunications - Temporary Entry 4.3 Government Procurement 4.4 Other regulatory issues <ul style="list-style-type: none"> - Electronic-commerce - Intellectual Property - Competition - Regulatory Coherence 4.5 Other issues <ul style="list-style-type: none"> - Legal and institutional provisions - Transparency provisions, including rules relating to Pharmac - Cooperation and Capacity Building - Development - Small and Medium Enterprises - Competitiveness & Business Facilitation - State-Owned Enterprises and Competition - Trade and Environment - Trade and Labour 	
<p>5. MEASURES WHICH THE GOVERNMENT COULD OR SHOULD ADOPT TO IMPLEMENT THE AGREEMENT ACTIONS</p>	

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SECTION	QUANTITATIVE ANALYSIS AVAILABLE (based largely information signalled in TPP Cabinet papers in recent years)
<p>6. ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL COSTS AND EFFECTS OF THE AGREEMENT ACTIONS</p> <p>6.1 Economic Effects</p> <p>6.2 Social Effects</p> <p>6.3 Immigration</p> <p>6.4 Cultural effects</p> <p>6.5 Environmental effects</p> <p>6.5.1 Regulatory effects</p> <p>6.5.2 Product effects</p> <p>6.5.3 Structural effects</p> <p>6.5.4 Scale effects</p>	
<p>7. COSTS TO NEW ZEALAND OF COMPLIANCE WITH THE AGREEMENT</p> <p>7.1 Tariff revenue</p> <p>7.2 Costs to government agencies of implementing and complying with TPP</p> <p>7.3 Costs to businesses of complying with TPP</p>	<p>7.1 Tariff analysis referenced above</p> <p>7.2 Some estimates of some costs to NZG of various likely provisions, inc. in IP, Transparency as referenced above.</p>
<p>8. COMPLETED OR PROPOSED CONSULTATION WITH THE COMMUNITY AND PARTIES INTERESTED IN THE AGREEMENT</p>	
<p>9. SUBSEQUENT PROTOCOLS AND/OR AMENDMENTS TO THE AGREEMENTS AND THEIR LIKELY EFFECTS</p>	
<p>10. WITHDRAWAL OR DENUNCIATION</p>	
<p>11. AGENCY DISCLOSURE/ADEQUACY STATEMENT</p>	

BECKETT, Aidan (TND)

From: JENKS, Andrew (EUR)
Sent: Tuesday, 20 October 2015 8:47 a.m.
To: COX, Sam (NAD)
Cc: BOULTON, Charles (NAD); EPPS, Tracey (LGL/TLU); SKERTEN, Charlotte (ISED); Brett Longley MFE; 'Michael Hobby'
Subject: RE: TPP NIA / Cabinet paper - updates required this week

[]

The notices should be covered in the NIA, in my view, applying your criteria below, even though they are very minor in terms of implementation cost and impact.

From: COX, Sam (TND)
Sent: Tuesday, 20 October 2015 8:41 a.m.
To: JENKS, Andrew (EUR)
Cc: BOULTON, Charles (TND); EPPS, Tracey (LGL/TLU); SKERTEN, Charlotte (LGL/TLU); Brett Longley (brett.longley@mfe.govt.nz); 'Michael Hobby'
Subject: FW: TPP NIA / Cabinet paper - updates required this week

[]

Andrew

I've considered your query with Tracey.

s9(2)(h)

Do the notices you refer to meet the above characteristics do you think? If so, I can take a stab at a draft paragraph for s6 of the NIA for you to consider.

Cheers

Sam Cox

Policy Officer
Trade Negotiations Division
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

s9(2)(a) sam.cox@mfat.govt.nz www.nzunsc.govt.nz



NEW ZEALAND
UNITED NATIONS
SECURITY COUNCIL
2015-16

From: JENKS, Andrew (EUR)
Sent: Tuesday, 13 October 2015 6:32 p.m.
To: BOULTON, Charles (TND); EPPS, Tracey (LGL/TLU); SKERTEN, Charlotte (LGL/TLU)
Cc: Brett Longley (brett.longley@mfe.govt.nz); Michael Hobby (Michael.Hobby@mbie.govt.nz)
Subject: RE: TPP NIA / Cabinet paper - updates required this week

[]

Regarding NIA Section 6, what is a "measure"? Does it extend to "administrative action"? if so, I think there is one measure in the environment chapter and one in the labour we will need to take (relating to illegal trade of fauna and flora (art 5) and child/forced labour (RR6) respectively). I think in both cases we considered that we might need to make a customs notice to deter certain behaviour/activity.

e

From: BOULTON, Charles (TND)
Sent: Tuesday, 13 October 2015 11:48 a.m.
To: HOPE, David (NAD); HAMILTON, Alison (TND); SLADE, Michelle (TND); JENKS, Andrew (EUR); MULLINDER Christine (Christine.Mullinder@customs.govt.nz); Tony Zohrab; Carolyn Guy (carolyn.guy@mpi.govt.nz); [s9\(2\)\(a\)](#) [s9\(2\)\(a\)](#)(TND); Angela.Mahony@mbie.govt.nz; TROUP, Jennifer (AUS); Rory McLeod; EPPS, Tracey (LGL/TLU); Karen English (karen.english@mbie.govt.nz); Peter.Mumford@mbie.govt.nz; Ben Temple [TSY] (Ben.Temple@treasury.govt.nz); Karl.Woodhead@mbie.govt.nz; Dominic Kebell; Peter Bartlett (Peter.Bartlett@mbie.govt.nz); Ashlin Chand (Ashlin.Chand@mpi.govt.nz)
Cc: [s9\(2\)\(a\)](#) Michael.Hobby@mbie.govt.nz; [s9\(2\)\(a\)](#) (TND); BURGESS, Brad (TND); GRIFFIN, Richard (LGL/TLU); COX, Sam (TND); Thomas Parry [TSY] (Thomas.Parry@treasury.govt.nz) (Thomas.Parry@treasury.govt.nz); [s9\(2\)\(a\)](#) ; John Young; fiona.duncan@mpi.govt.nz; George Wardle; Carmen.Mak@mbie.govt.nz; david.haigh@customs.govt.nz; ANDERSON, Jodi (TND); Chris Carson (chris.carson@mpi.govt.nz); Trish Ranstead (Trish); Ursula.Egan@mpi.govt.nz; GRIFFIN, Richard (LGL/TLU); SKERTEN, Charlotte (LGL/TLU)
Subject: TPP NIA / Cabinet paper - updates required this week

[]

Dear Chapter leads

In addition to my email yesterday, there are a number of areas we need inputs from Chapter leads to finalise the TPP NIA and Cabinet paper by the end of this week. Could we please get inputs from chapter leads for each of the following areas? (Our list of chapter leads is copied at the end of this email - could these people please ensure work is under way in each area, and let us know if there are any issues?)

OUT OF SCOPE

Input	Detail	Deadline	Comment	OUT OF SCOPE
NIA Section 4 -	Please update	Wednesday 14 Oct,	See attached TPP	

<p><i>Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand</i></p>	<p>previously provided chapter sub-sections, in line with final outcomes, particularly checking:</p> <ul style="list-style-type: none"> • Numbers, and • consistency with factsheets 	<p>COP</p>	<p><i>NIA – Section 4 full (except IP). (We'll be sending through the IP sub-section separately.)</i></p> <p>Note this is the same request sent through on Monday 12 October.</p>	<p>OUT OF SCOPE</p>
<p><i>(NIA Section 5 - Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms)</i></p>	<p>(MFAT's Trade Law Unit, TLU, will be contacting individual chapter leads as required on this section.)</p>			
<p><i>NIA Section 6 – Measures which the Government could or should adopt to implement TPP</i></p>	<p>Chapter leads to please:</p> <ul style="list-style-type: none"> • (1) update previously provided summaries of legislative and regulatory change needed to implement TPP; and • (2) provide summaries of any change to policy and practice needed to implement TPP. 	<p>Thursday 15 Oct, COP</p>	<p>See attached <i>Implementation Chapter 6 of NIA</i>.</p> <p>If there are implementation options, these should be described, and officials' preference stated.</p>	
<p><i>NIA Section 8 – The costs to New Zealand of compliance with the treaty</i></p>	<p>Check the attached summary of fiscal costs:</p> <ul style="list-style-type: none"> • Please give me a call if there are any additional implementation activities not included in your Section 4 input that would likely have significant costs that should be noted in the NIA • Where relevant, add an estimated cost (annual or one-off). 	<p>Thursday 15 Oct, midday</p>	<p>See attached <i>Fiscal costs, from Section 4 inputs</i>.</p> <p>Note that our proposed approach is to treat costs of attending TPP committees, and of any subsequent negotiations, separately. No need for estimates here.</p>	

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Cabinet Paper – Chapter summary	Please draft, or re-send a paragraph summarising outcomes for your chapter. <ul style="list-style-type: none"> These should be <u>around or under 100 words</u> for most chapters (longer for Goods, Investment, IP, etc) 	Thursday 15 Oct, COP	See attached email <i>TPP arrangements: post conclusion cabinet paper</i> , especially paras 21-30 of the attached Korea Cabinet paper.	OUT OF SCOPE
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Topic	Subject Matter
Trade in Goods	OUT OF SCOPE
Cross-Border Trade in Services	
Financial Services	
Telecommunications	
Temporary Entry	
Investment	
Rules of Origin	
Textiles	
Customs	
Trade Remedies	
Sanitary and Phytosanitary (SPS)	
Technical Barriers to Trade (TBT)	
State-Owned Enterprises	
Competition	
Electronic-Commerce	
Intellectual Property	
Government Procurement	
Legal and Institutional Issues	
Pharmaceuticals Annex	
Environment	
Labour	
Competitiveness and Business Facilitation	
Cooperation and Capacity Building	
Development	
Regulatory Coherence	
Small and Medium Enterprises	

Regards
Charles Boulton

Senior Policy Officer
Trade Negotiations Division
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

T [s9\(2\)\(a\)](#) M [s9\(2\)\(a\)](#) F [s9\(2\)\(a\)](#) E charles.boulton@mfat.govt.nz
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BECKETT, Aidan (TND)

From: KALDERIMIS, Sophie (LGL/ERL)
Sent: Tuesday, 30 June 2015 6:16 p.m.
To: BOULTON, Charles (NAD); COX, Sam (NAD); GALVIN, Liese (PAR); ANDERSON, Jodi (TND)
Cc: REVELL, Alice (LGL/ERL); RIDINGS, Penelope (LGL); GRIFFIN, Richard (NAD)
Subject: NIAs and secondary treaty actions

[]

Good evening, Charles et al,

s9(2)(h)

Each NIA must contain all relevant information pertaining to its respective treaty. Cross referencing may be used and cross referral utilised (e.g. the ability to ratify TPP may be used as an 'advantage' to taking one of the supplementary treaty actions), however each NIA needs to be able to be read as a standalone document.

In respect of the structures relied upon to reach these positions, Standing Order 397 requires that for each treaty presented to the House, a "national interest analysis for the treaty, which addresses all the matters set out in Standing Order 398, will be presented at the same time as the treaty."

The Cabinet Manual, states that:

7.116 Presenting a treaty to the House requires the preparation of a national interest analysis. The national interest analysis addresses:

- a. the reasons for New Zealand taking the binding treaty action;
- b. the implications for New Zealand of taking the binding treaty action; and
- c. the means of implementing the treaty action domestically.

7.117 The department with the main policy interest in the treaty, in consultation with the legal division of the Ministry of Foreign Affairs and Trade, is responsible for developing the national interest analysis according to the requirements of the Standing Orders. Drafting guidance is available from the Ministry of Foreign Affairs. The national interest analysis must be approved by Cabinet before it is presented to the House.

s9(2)(h)

Thanks,

Sophie

Sophie Kalderimis

Treaty Officer
Legal Division
New Zealand Ministry of Foreign Affairs & Trade | Manatū Aorere

T [s9\(2\)\(a\)](mailto:s9(2)(a)@mfat.govt.nz) ☎ sophie.kalderimis@mfat.govt.nz

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